

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 14-01958

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANK VANALST, ALSO KNOWN AS SHAUN JOHNSON,
DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (MARY P. DAVISON OF
COUNSEL), FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA, FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered July 30, 2014. The judgment revoked a conditional discharge and imposed a term of imprisonment.

It is hereby ORDERED that the judgment so appealed from is unanimously vacated on the law, and the matter is remitted to Ontario County Court for further proceedings on the indictment.

Memorandum: Defendant appeals from a judgment imposing a term of imprisonment upon the determination of County Court that he violated the terms and conditions of a conditional discharge that had been imposed upon his purported conviction of criminal possession of a controlled substance in the fifth degree (Penal Law § 220.06 [1]) upon his plea of guilty. The People correctly concede that the parties and the court mistakenly believed that defendant had entered a plea of guilty at a prior appearance, when in fact, no plea proceeding had taken place. Inasmuch as there is no conviction (*see generally* CPL 1.20 [13]), we conclude that the subsequent sentence imposing a conditional discharge, the determination on the declaration of delinquency, and the imposition of a term of imprisonment are void (*see generally* CPL 1.20 [15]). We therefore vacate the judgment and remit the matter to County Court for further proceedings on the indictment (*see generally* *People v Tyrell*, 22 NY3d 359, 366).

Entered: March 24, 2017

Frances E. Cafarell
Clerk of the Court